

NORTH CAROLINA
DURHAM COUNTY

CHDO GRANT AGREEMENT

This CHDO Grant Agreement ("Agreement") is made and entered into this the _____ day of _____, 2011 between the City of Durham, North Carolina, a municipal corporation, organized and existing under the laws of the State of North Carolina, whose address is 101 City Hall Plaza, Durham, North Carolina (the "City") and Builders of Hope, Inc. (BOH) a non-profit corporation exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended and having an office at 310 N. Harrington Street, Raleigh, NC 27603.

WHEREAS, the City has entered into an Agreement to receive funds under the HOME Investment Partnerships Program (hereinafter called the "HOME" Program) from the US Department of Housing and Urban Development (hereinafter called "HUD"); and

WHEREAS, the City has set aside a portion of its HOME Program funds for community housing development organizations in accordance with the National Affordable Housing Act of 1990, as amended, (hereinafter called the "Act"); and

WHEREAS, Builders of Hope, Inc. is certified by the North Carolina Housing Finance Agency as a Community Housing Development Organization (CHDO), per the definition set forth by HUD and is eligible for award of CHDO designated funds per 24 CFR 570.92 (300).

WHEREAS, the City and BOH have entered into this Agreement in order to provide BOH with funding for the purpose of property acquisition of substandard homes, as such funding is permissible under 24 CFR 92.205;

WHEREAS, the City desires to provide financing to BOH to assist it with its efforts of providing affordable housing to low and moderate income families throughout the City of Durham;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

A. DEFINITIONS:

Except to the extent modified or supplemented by this Agreement, any term defined in 24 CFR Part 92 shall have the same meaning when used herein.

- (1) Agreement means this agreement, the approved application for HOME assistance (including cover letters, maps, schedules, award letters prior and subsequent to this funding agreement, and other submissions in the approved application), and any subsequent amendments to this Agreement.

- (2) CHDO means Builders of Hope, Inc.
- (3) Assistance means the funds provided under this Agreement.
- (4) Program means the affordable housing program or project, including the administration thereof, for which assistance is being provided under this Agreement.

B. USE OF HOME FUNDS:

- (1) The CHDO shall perform the projects or tasks related to its allocation of HOME funds according to the schedule and within the budget outlined in Attachment A. Attachment A is hereby made a part of this Agreement, as it now reads or as it may be modified by the parties.
- (2) The CHDO shall propose projects within 24 months of receiving HOME funds under this Agreement which meet HOME requirements under 24 CFR Part 92.300 and conform to the City's Consolidated Plan.

C. DURATION OF THE AGREEMENT:

The City agrees to provide to the CHDO HOME Investment Partnerships Program (HOME) Assistance under Title II of the National Affordable Housing Act of 1990 as described in this Agreement. This Agreement will remain in effect until **December 31, 2012**.

D. SCOPE OF SERVICES:

Project funds will be used for the rehabilitation or replacement of the single family properties located at 1010, 1013, 1015, 1017, 1019, 1100, 1101, 1102, 1103 and 1104 Rock Street and 1111 and 1113 Rosedale Avenue that will be totally rehabilitated, as described in Attachment A.

E. AMOUNT OF ASSISTANCE:

The City shall make available to BOH **One Hundred Eighty Thousand (\$180,000.00) Dollars** pursuant to this Agreement. Said funds shall be disbursed by the City to BOH for performance of the services described in Attachment A.

F. OBLIGATIONS OF THE CHDO:

- (1) The CHDO shall comply with all applicable regulations outlined in 24 CFR Part 92, and all applicable lawful requirements of the City, all applicable requirements of the General Statutes of the State of North Carolina and any other applicable statutes, laws and Executive Orders currently or hereafter

in force.

- (2) The CHDO shall assume responsibility for (i) managing the day-to-day operations of its HOME program to assure compliance with program requirements outlined in 24 CFR Part 92, and (ii) for taking appropriate action when performance problems arise.
- (3) The CHDO shall take full responsibility for ensuring that housing it has assisted with HOME funds meets the affordability requirements of 24 CFR Part 92.252 or 92.254 as applicable, and agrees to repay the outstanding balance of its HOME funds remaining to the City if the housing does not meet the affordability requirements for the specified time period.
- (4) The CHDO shall spend its total allocation of HOME funds under this Agreement on eligible activities by **December 31, 2012**.
- (5) The CHDO shall submit a project completion report to the City no later than 60 days after the final drawdown request for HOME funds under this Agreement.
- (6) The CHDO shall comply with all applicable uniform administrative requirements as described in 24 CFR Part 92.505.
- (7) The CHDO shall carry out each activity in compliance with all federal laws and regulations described in 24 CFR Subpart H, including the environmental review in 92.352.
- (8) The CHDO shall assume affirmative marketing responsibilities in accordance with 24 CFR Part 92.351.
- (9) The CHDO shall return to the City any unobligated HOME funds on hand at the expiration of the Agreement.
- (10) The CHDO shall be responsible for complying with the provisions of this Agreement even when the CHDO designates a third party or parties to undertake all or any part of the program. All third parties must be bound in writing to the same provisions as required by this Agreement and approved in advance by the City.
- (11) The CHDO shall comply with all lawful requirements of the City necessary to insure that the program is carried out in accordance with the CHDO's Certifications including the certifications of assumption of environmental and labor standard responsibilities specified in 24 CFR Part 92.
- (12) The assistance provided under this Agreement shall not be used by the CHDO to pay a third party to lobby the City for funding approval, approval of

applications for additional assistance, or any other approval or concurrence of the City required under this Agreement. HOME funds may be used to pay reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitations, if these services are eligible as program costs, and in accordance with Attachment A.

- (13) The CHDO shall reimburse the City for any amount of HOME funds determined by the City to have been improperly expended.
- (14) If applicable, the CHDO shall abide by the conditions prescribed in 24 CFR Part 92.257 for the use of HOME funds by religious organizations.
- (15) The CHDO shall notify the City in writing of any changes in its 501 (c) (3) tax exempt status throughout the specified period of this Agreement, or any other change to the nonprofit which alters the organization such that it no longer meets the definition of a CHDO as provided under 24 CFR Part 92.

G. RECORDS AND REPORTS:

- (1) The CHDO shall maintain and make available at reasonable times and places all records, information and reports necessary to assist the City in meeting its internal and federally mandated record keeping and reporting requirements in accordance with 24 CFR Part 92.508. Such records and accounts shall include all property, personnel, and financial records the City and Federal agencies deem necessary to assure a proper accounting for all HOME Program funds.
- (2) The CHDO shall provide the City with all information that the City may reasonably require, including information for the City to complete the Consolidated Annual Performance and Evaluation Review report and other reports required by HUD.
- (3) The CHDO shall provide an annual audit report performed in compliance with OMB Circular A-133.
- (4) The CHDO shall allow the City to conduct monitoring and evaluation activities as determined necessary by the City and HUD.
- (5) The CHDO shall keep a fully executed copy of this Agreement and a copy of the HOME regulations on file in their place of business at all times.
- (6) The CHDO shall keep all documents used to determine their status as a Community Housing Development Organization as defined under 24 CFR Part 92 current and available for inspection by the City for the duration of this Agreement.

- (7) The CHDO agrees to repay, remit or return to the City any amount of remaining HOME funds provided under this Agreement, if the City determines that the CHDO does not have the capacity to carry out its HOME program on schedule or in a timely manner. The City shall provide a written determination of its finding to the CHDO ten (10) days prior to the request to remit, return or repay the HOME funds.
- (8) The CHDO shall provide any duly authorized representative of the City, the Department of Housing and Urban Development and the Comptroller General of the United States, at all reasonable times, access to and the right to inspect, copy, monitor and examine all of the books, papers, records, and other documents relating to the HOME grant and the fulfillment of this Agreement for a period of three years following the completion of all closeout procedures respecting HOME funds, and the final settlement and conclusion of all issues arising out of the HOME grant.

H. PAYMENT:

- (1) The CHDO shall request disbursement of HOME funds only for reimbursement of eligible expenditures made or eligible expenses incurred by the CHDO, except where advance payments are explicitly authorized in writing by the City at the sole discretion of the City.

All expenditures and expenses shall be incurred in accordance with the provisions of the Agreement. Payments shall only be made after the CHDO has presented documentation of expenses that meet City approval. It is expressly understood and agreed by the CHDO that payment by the Grantee will not exceed the maximum sum of **\$180,000.00** for all of the services specified in Attachment A. Further, the CHDO understands and agrees that any payment made under this Agreement by the City is limited to funds made available under the grant referenced above. The City shall make payments upon receipt of a request for check from the CHDO, documentation of expenditures and any other documentation that the City's Director of the Department of Community Development ("DDCD") may require from the CHDO. All such documentation shall be in a form and substance satisfactory to the City. Payments shall be made only for the activities listed in Attachment A. Check requests for reimbursable expenses will be processed by the City for payment no more often than monthly, until all such grant funds have been expended or until this Agreement has expired, whichever shall come first.

- (2) The sum total of the CHDO reimbursements during the term of the Agreement shall not exceed the amount of the agreed upon budget appearing in Attachment A.

- (3) The CHDO shall submit monthly reports to the DDCD within seven (7) business days following the closure of the month for which the activity is being reported. The CHDO shall provide to the City any other information determined by the City to be necessary or appropriate for the proper monitoring of this Agreement. Delays by the CHDO in making any report to the City required by this Agreement may, at the City's sole discretion, result in delays in payment to the CHDO of part or all of the CHDO's request for funds. A delay in making a disbursement by the City to the CHDO does not change the time required of the CHDO to submit reports to the City.

I. CONFLICT OF INTEREST:

- (1) No employee, agent, consultant, officer, elected official or appointed official of the City of Durham who has responsibilities related to the HOME Program or access to "inside" information concerning said program shall obtain a financial benefit or interest from any HOME Program activity for themselves or those with whom they have family or business ties during their tenure or for one year thereafter.
- (2) The CHDO shall make a good faith effort to assure that this provision is not violated, and that any suspected violations are promptly reported to the City.

J. DEFAULT:

- (1) It is expressly agreed and understood that the CHDO's designation as a CHDO shall become null and void, at the City's option, in the event the CHDO fails to meet one or more of the criteria for CHDO designation and or fails to develop, sponsor or own one or more housing projects in conformance with 24 CFR Part 92.
- (2) The City shall notify the CHDO in writing of any such default under this Agreement.
- (3) The CHDO shall have sixty (60) days after receipt of the written notice of default within which to cure such default.
- (4) The CHDO agrees to repay, remit or return to the City any amount of unspent HOME funds provided to the CHDO in the event of a default under the terms of this Agreement.

K. SUSPENSION OR TERMINATION:

- (1) The City may suspend or terminate this Agreement, in whole or in part, if the CHDO materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein or

announced by HUD.

- (2) In the event there is probable cause to believe the CHDO is in noncompliance with any applicable rules or regulations, the City may withhold said HOME funds until such time as the CHDO is found to be in compliance by the City, or is otherwise determined to be in compliance.
- (3) The City shall advise the CHDO in writing what action(s) must be taken for resumption of payments.
- (4) Termination due to adverse environmental impact. This Contract is conditioned on the City's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review. This Contract will terminate at the conclusion of the environmental review process if the results of the review indicate that the project would have a significant adverse impact on the environment and that this impact cannot be feasibly eliminated or mitigated.

L. HOLD HARMLESS:

- (1) The City shall not be liable for any and all claims, actions, suits and judgments whatsoever arising out of the performance or nonperformance of this Agreement by the CHDO, its employees, officers or agents.
- (2) The CHDO shall hold harmless, defend and indemnify the City, its officers, agents, and employees from all such claims, actions, suits, charges, and judgments under this Agreement.

M. AMENDMENTS:

- (1) The City or the CHDO may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing and signed by a duly authorized representative of both organizations.
- (2) Such agreements shall not invalidate this Agreement, nor relieve or release the City or CHDO from its obligations under this Agreement.
- (3) The City, may at its discretion, amend this Agreement to conform with Federal, State or local government guidelines, policies and available funding amounts, or for other reasons.
- (4) If such amendment results in a change in HOME funding, a new attachment shall be executed with corresponding changes to the project or tasks, schedule and budget that now appear in Attachment A.

N. MISCELLANEOUS PROVISIONS:

- (1) Service of all notices under this Agreement shall be sufficient if given personally, by registered or certified mail, return receipt requested, and mailed to the party involved at the address and to the attention of the person set forth below, or to such other person or address as said party may provide in writing from time to time.
- (2) Any such notice mailed to such address shall be effective upon the date received as shown by the returned receipt or otherwise.

To City:

Director, Department of Community Development
City of Durham
101 City Hall Plaza
Durham, NC 27701
919-560-4570
919-560-4090 fax

To Grantee:

Chief Executive Officer
Builders of Hope, Inc.
310 N. Harrington Street
Raleigh, NC 27603
919-830-6666
919-473-0412 fax

IN WITNESS WHEREOF, the City of Durham and Builders of Hope, Inc. have caused this CHDO Grant Agreement to be duly executed all as of the day and year first above written.

City of Durham

By:_____

Thomas J. Bonfield, City Manager

ATTEST:

City of Durham

City Clerk

Builders of Hope, Inc.

BY:_____

Nancy Murray, Chief Executive Officer

ATTEST:

Secretary

(Affix corporate seal here)

**NORTH CAROLINA
DURHAM COUNTY**

I, a notary public in and for the aforesaid County and State certify that _____ personally appeared before me this day, and acknowledged that he or she is the _____ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract or agreement was signed in its corporate name by Thomas J. Bonfield, its City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the _____ day of _____, 2011.

My Commission Expires: _____

Notary Public

**NORTH CAROLINA
DURHAM COUNTY**

I, a notary public in and for the aforesaid County and State, certify that Nancy Murray personally appeared before me this day and stated that he or she is the _____ Secretary of Builders of Hope, Inc., a non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing contract or agreement with the City of Durham was signed in its name by its Chief Executive Officer, whose name is Nancy Murray, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the _____ day of _____, 2011.

My Commission Expires: _____

Notary Public

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

City's Finance Officer

Date

ATTACHMENT A

Scope of Services

1. **Properties to be Rehabilitated with Grant.** Funds awarded under this Agreement will be used for the rehabilitation or reconstruction of six single family dwellings located at 1010, 1100, 1102 and 1104 Rock Street and 1111 and 1113 Rosedale Avenue and six “shotgun” style single family homes located at 1013, 1015, 1017, 1019, 1101 and 1103 Rock Street. Builders of Hope, Inc. (BOH) will renovate the existing deteriorated dwellings into energy efficient homes or replace a demolished dwelling with a donated house. Subsequent to a total rehabilitation, these properties will be offered for sale as single family homes.

All Rock Street properties were acquired by BOH using a previous grant from the City of 2009-2010 HOME funds. The Rosedale Avenue properties were previously acquired using HOME funds also provided by the City. BOH will renovate the existing deteriorated dwellings into energy efficient homes or replace a demolished dwelling with a donated house. All construction work and other costs for the completion not covered by this Agreement will be supported by funding from other sources.

2. **Eligible Buyers.** The rehabilitated properties will be sold to low-mod income buyers. The buyers purchasing the rehabilitated home may not earn more than 80% of the HUD-determined Area Median Income (AMI), as that may be revised from time to time by HUD. If any of the homes are offered for rental by BOH, they must be occupied by households having an income which does not exceed 60% of the HUD-determined AMI. In the event BOH wishes to offer any units for rental, BOH must obtain prior written consent from the DDCCD and must also comply with all HOME rental guidelines as specified by HUD.

3. **Restrictive Covenants.** BOH shall impose a Declaration of Restrictive Covenants in form and content agreed to by the City upon each property rehabilitated or replaced with a donated house specified under this Agreement at the time BOH submits its first request for funds, with the Declaration placed on file at the Register of Deeds for Durham County. A Period of Affordability shall be imposed for 15 years.

4. **Rehabilitation Standards.** BOH shall rehabilitate each home to meet System Vision specifications, with Advanced Energy certifying upon completion that the energy required to heat and cool each home will not exceed the guaranteed usage. Upon completion of construction, BOH shall provide to the DDCCD for each home a copy of the Comfort and Energy Use Two Year Guarantee along with the Energy Star certificate, and a copy of the certificate of occupancy. Completion of construction shall be defined as the date by which a certificate of occupancy has been issued for each home.

5. Remedy for Breach. If, for any reason BOH does not complete construction for all twelve homes within eighteen (18) months of the commencement of this Agreement, or for any other breach of this Agreement's terms, the City shall have the right to recapture from BOH the amount of funds provided for each property for which acquisition and rehabilitation was not timely completed, or, at the City's election, to have a deed of trust encumbering the parcel and any improvements constructed thereon provided to the City by BOH, noting the entire amount of funds provided by the City under this Agreement, as the prior HOME funds provided, as the secured amount, with the City as the beneficiary

All terms of this Agreement shall continue to be enforceable by the City so long as any obligations of BOH under this Agreement have not been fulfilled. In addition to the remedies provided under this section, the City shall retain all other remedies provided in any project documents, or under local, state or federal laws or regulations.

6. Payments and Documentation. BOH will provide to the DDCCD with its request for funds, documentation that the restrictive covenants imposing the period of affordability have been imposed and have been filed at the Durham County Register of Deeds.

After provision of the proper documentation, BOH will be reimbursed the actual cost of construction of each unit up to the amount specified for City-provided HOME funding in the Project Budget, but in no event shall the aggregate expenditure for all properties of such HOME funds exceed \$180,000.00. Funds may be shifted between line items of the Project with prior written approval of the DDCCD provided these adjustments do not extend the term of the agreement or increase the total funding for contract activities and only to the extent that such action does not result in a change in the Project and so long as it does not exceed ten percent (10%) of the line item total from which the funds are being removed or to which the funds are being added. In addition, the DDCCD shall have the authority to permit BOH to rent the rehabilitated homes to eligible tenants, as governed by HOME regulations. BOH shall not be allowed to rent the rehabilitated homes without such written permission.

Upon sale of each property to a home buyer, BOH shall provide to the DDCCD a copy of the deed transferring the property, file-stamped by the Register of Deeds, along with certification of the eligible buyer's household income, which shall be computed using the HUD regulations governing Section 8 eligibility determination, as those regulations may be revised from time-to-time by HUD.

7. Project Budget. All properties have been previously acquired by BOH with the FY '09-'10 HOME funds awarded to BOH at a cost of \$18,500 per property for the 10 Rock Street properties and \$57,146 for the 2 Rosedale Avenue properties.

House	Current	BOH	Sales	Subsidy
-------	---------	-----	-------	---------

	Subsidy	Construction Costs	Price	Needed
Row Houses (600 SF) x 6	\$18,500 (ea.) \$111,000 (all 6)	\$71,100 (each) \$426,600 (all 6)	\$59,000 \$354,000 (6)	(\$12,100) (\$72,600)
1104 Rock (1250 SF)	\$18,500	\$121,081	\$112,500	(\$8,581)
1102 Rock (903SF)	\$18,500	\$109,732	\$81,270	(\$28,462)
1100 Rock (1165 SF)	\$18,500	\$119,530	\$93,980	(\$25,550)
1010 Rock (1005 SF)	\$18,500	\$116,810	\$92,800	(\$24,010)
				(\$159,203)

House	Current Subsidy	BOH Construction Costs	Sales Price	Subsidy Needed
1111 Rosedale (1000SF)	\$27,246	\$94,346	\$85,000	(\$9,346)
1113 Rosedale (1050 SF)	\$29,900	\$99,718	\$89,250	(\$10,468)
				(\$19,814)